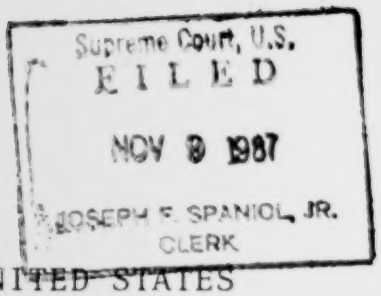
87 1071

CASE NO.



IN THE SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1987

BYRON T. LIGGETT AND LORRIETA A. LIGGETT
Plaintiff-Appellant

STATE FARM FIRE AND CASUALTY COMPANY
Defendant-Appellee

JURISDICTIONAL STATEMENT

APPEAL FROM
THE UNITED STATES COURT OF APPEALS
FOR THE TENTH CIRCUIT

Byron T. Liggett and Lorrieta A. Liggett
4211 Sandpiper Lane
Great Bend, Kansas 67530
Telephone 316 792 4141

Pro Se

QUESTIONS PRESENTED BY THIS APPEAL

1) Does the Constitution of the United States allow there ever to be cause for a business corporation to sue and prosecute its clients or any citizen in civil court on the business corporation's charge of criminal offense when the government of the state has determined that those same clients, citizens, should not be charged with that criminal offense and should not be prosecuted on a charge of that criminal offense?

2) Is our government now going to allow there to be cause for a business corporation to sue and prosecute its clients or any citizen in civil court on a charge of criminal offense?

3) Is the criminal charge and prosecution of the citizen the function of our government or is it the function of corporate business?

4) Is civil court ever the correct and just forum for the determination of guilt or innocence with respect to a charge of criminal offense?

5) Is it Constitutional and maintaining of the citizen's civil rights for an insurance company to be allowed to charge and prosecute the citizen in civil court on a criminal charge that the state refuses to file against that same citizen in criminal court?

6) Was it judicial error and in violation of due process, and a threat to the security of the citizen, for the judiciary of the State of Kansas to allow State Farm Fire and Casualty Company to pursue the course of action set forth in and initiated by the filing of State Farm Fire and Casualty Company versus Liggett, Colonial Savings and Loan Association, Security

State Bank, and Louis and Anita Graves?

7) Is it legal and in accordance with due process for an insurance company to file a declaratory judgment action against its clients at a time when no controversy exists between that insurance company and those clients?, i.e., is it legal and in accordance with due process for an insurance company to use a declaratory judgment action as the means to terminate the fiduciary relationship that exists between the insurer and the insureds?

8) If an insurance company contends that a client committed a criminal offense, and assuming the insurance company claims it has evidence (real, fabricated, or otherwise) that the client is guilty of that criminal offense:

a. Is it justice and the fulfillment of ethical, legal, and social responsi-

bility for the insurance company to take its suspicions and evicence to the people, the state, for determination as to whether or not that client should be criminally charged and criminally prosecuted, by the state, in criminal court?;

or,

b. Is it justice and the fulfillment of ethical, legal, and social responsibility for the insurance company to deliberately avoid going to the people to see what the state thinks about the insurance company's contentions and evidence that its client has committed a crime and, on its own, sue the client in civil court on its charge of criminal offense, assume the role of plaintiff-prosecutor, thus casting the client

in the role of criminally accused defendant, and, while using all its financial power and influence, direct and control the prosecution of the client on the insurance company's charge of criminal offense?

9) Was it legal and ethical for State Farm Fire and Casualty Company, on August 21, 1981, when it saw that its argument for invalidating our insurance policy was lost, because of the demand made by Colonial Savings and Loan Association that State Farm Fire and Casualty Company honor our insurance policy with respect to Colonial Savings and Loan Association's interests, to call and hold a meeting, in the office of its attorney, for the express purpose of having us criminally indicted by the state, not for justice, but, for the sole and selfish purpose of helping it prevail in the suit it filed against us

in civil court three (3) months earlier?

10) Was the presiding judge at the trial of the prior action, Judge Barry Bennington, in error when he told the jury that the fundamental question was whether or not we burned our house down?

11) Is not the burning down of one's house, for the purpose of collecting on an insurance claim, a crime?, and is not that what we were accused of?

12) Was not the trial of the prior action a criminal trial in civil court just as the presiding judge said it was?

13) Had we not proved our innocence of State Farm Fire and Casualty Company's charge of arson, would we not have stood as convicted criminals in the eyes of the world and would we not have suffered the attendant social stigma of convicted crim-

inals, and have we not been imprisoned in our pursuit of justice for the past six and one half years?

14) Did or did not the unanimous opinion of the Kansas Supreme Court establish the fact issues of the prior action as judicially resolved?

15) Is it legal and is it justice for State Farm Fire and Casualty Company to be allowed to use as its defense, in the instant case, its continued contention that we are criminals after it has been proven by a jury decision and after it has become judicially established by the entire judicial process of the State of Kansas that we are not?

16) Was it fair for the United States District Court to assign our case, the instant case, to a United States Magistrate who is listed in Martindale-Hubbell as a represent-

ative of the defendant?

17) Is malicious prosecution a matter of common law and is not the determination of probable cause a matter for a jury rather than the court to decide?

18) Was it judicial error for Chief Judge O'Connor and the United States Court of Appeals to base their decisions on the same contrived and fabricated evidence and theories put forth earlier by the defendant (evidence and theories totally rejected by the entire judicial process of the State of Kansas) without even considering the possibility that the fire that destroyed our home was accidental and that we are innocent of any wrongdoing in this matter?, i.e., do not the decisions to grant State Farm Fire and Casualty Company summary judgment presume us guilty and deny us

the presumption of innocence?

19) Was it fair and just for Chief Judge O'Connor to grant defendant's motions for summary judgment without even addressing the issues and facts of the case as set forth in our Memorandum and Response to Defendant's Motion for Summary Judgment and for the United States Court of Appeals to affirm that grant without even addressing the issues and facts of the case as set forth in our Brief of Appeal?

20) Do not the decisions of Chief Judge O'Connor and the United States Court of Appeals tell the insurance industry and the judiciary that what State Farm Fire and Casualty Company did to us is an acceptable way for an insurance company to relate judicially to its clients?

21) Is the Bill of Rights of our

Constitution merely a restraint on our government or is our Bill of Rights an absolute guarantee of the rights of the citizen which cannot be denied or abridged by any power other than the citizens themselves through the ballot box and their elected representation?

22) Is not our Bill of Rights a definition of each citizen's civil rights and a restraint on all citizens and all institutions who might unjustly attack and threaten those rights, freedoms, and securities realized by all citizens through the constitutional democracy our government maintains?

23) If there is real probable cause to hold the citizen to answer and to threaten the citizen as free and self-determined, because of some criminal act the citizen is suspected of committing, does the sword

of justice, from the filing of the criminal charge through to the completion of the criminal prosecution, belong in the hands of the people who seek justice for all or does it belong in the hands of the business corporations who seek financial profit for themselves?

24) Is it the civil responsibility and duty of the American citizen to participate in the democratic process of America and does the fulfillment of that responsibility and duty include the initiating of and the pursuit of judicial redress when the rights and protection of the American citizen, as set forth in the Constitution of the United States, are held for naught by an insurance company for the express purpose of cheating its clients and establishing a new, unethical, unjust, and threatening way for the insurance industry to relate judicially to its clients

and, potentially, to all American citizens?

25) Had State Farm Fire and Casualty Company been successful in its prosecution of us in civil court on its charge of criminal offense, under the guise of a declaratory judgment action, in all likelihood, would not such abused judicial process be commonplace by now and accepted practice for the insurance industry in definition of its judicial relationship with the American public?

26) If we were to fail in our pursuit of judicial redress with our case and if our courts were not to put their stamps of unqualified disapproval on the illegal, unethical, and unConstitutional course of action taken by the defendant in the prior case, and if the defendant is not required to make the widely circulated public apology and to

pay the large monetary awards that we ask, what assurance is there, for any of us, that the insurance industry and the judiciary, in the future, will not point to the case of State Farm Fire and Casualty Company versus Liggett et al as the precedent in allowing the same thing to happen to others as was allowed to happen to us?

27) If we, as the society of insurers and insureds that we are rapidly becoming, start allowing the insurers to sue and prosecute the insureds, as a means for the insurers to deny, regulate, and otherwise control the payment of the insureds' claims, what chance is there that the insureds will survive as anything other than as denied, regulated, and fully controlled premium-payers working their lives away to feed and maintain a bunch of insurance companies way off somewhere in their gleaming castles of glass and

steel from where they control everything?

28) Is not the only sure way to avoid all forms of totalitarianism, including the one structured around the interests of corporate business, the preservation of our Constitution, the social document and political contract around which our democratic government is structured?

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IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1987

CASE NO. _____

BYRON T. LIGGETT AND LORRIETA A. LIGGETT
Plaintiff-Appellant

vs

STATE FARM FIRE AND CASUALTY COMPANY
Defendant-Appellee

JURISDICTIONAL STATEMENT OF APPEAL FROM THE UNITED STATES COURT OF APPEALS FOR THE TENTH CIRCUIT

OPINIONS BELOW AND JURISDICTION

On October 21, 1985, we filed the instant civil action against State Farm Fire and Casualty Company in the United States District Court for the District of Kansas, Kansas City, in which we contend that, through its action against us beginning on May 18, 1981, State Farm Fire and Casualty Company: 1) violated Amendment Five of the Constitution of the United States; 2) abused judicial process; and 3) maliciously prosecuted us. We asked for a jury trial so that we could turn the injustice to us into justice for all and tell the American peolple about what we believe State Farm Fire and Casualty Company and the insurance industry have in mind for all of us; however, on March 19, 1987, Chief Judge O'Connor, United States District Court for the District of Kansas, granted State Farm

Fire and Casualty Company's motions for summary judgment saying that State Farm Fire and Casualty Company did not violate the Constitution of the United States, because our Bill of Rights is only a restraint on our government and is not a restraint on corporate business, that State Farm Fire and Casualty Company did not abuse judicial process, and that State Farm Fire and Casualty Company had probable cause and was justified in suing and prosecuting us on a criminal charge in civil court. A copy of Chief Judge O'Connor's Memorandum and Order is Appendix A.

On May 6, 1987, we submitted our appeal from the District Court's decision to the United States Court of Appeals for the Tenth Circuit and on August 25, 1987, without addressing any of the issues we presented for review, our appeal was decided

in favor of State Farm Fire and Casualty Company. A copy of the three-judge panel decision (Order and Judgment) is Appendix B.

On September 2, 1987, we submitted our notice of appeal to the United States Court of Appeals for the Tenth Circuit, however, the Court of Appeals claimed, on September 22, that it did not receive that notice of appeal. We resubmitted our notice of appeal to the Court of Appeals on October 10, 1987, and on October 15 it was filed by that court. A copy of each notice of appeal is included in Appendix C.

On November 2, 1987, we submitted our Brief of Appellant to the Court and on November 4 the Court returned the forty copies of our Brief of Appellant, "for their failure to comply to any extent with the Court's Rules of Procedure". The Court

retained the original of our Brief of Appellant and the check we submitted in payment of the docketing fee, and with return of the forty copies enclosed a sample to follow in preparing a petition for writ of certiorari. A copy of the letter from the Clerk of the Court returning our "papers" is Appendix D, and we believe the misspellings of name and address in that letter are intentional and designed to belittle and intimidate us as pro se citizens.

On November 20, 1987, while believing we had been denied a basic right, the right of direct appeal to the highest court of our democracy, we submitted our petition for writ of certiorari to the Court and on November 27 the Court returned the original and forty copies of our petition for writ of certiorari, because of its being on the wrong-sized

paper. Accompanying the return of our Petition for Writ of Certiorari, that we received on November 30, was a letter from the Clerk of the Court, dated November 23, returning the original of our Brief of Appellant, which is stamped as having been received by the Court on November 9 even though it and the forty copies were submitted to the Court on November 2 and the forty copies returned to us by the Court on November 4, and the check we submitted with our Brief of Appellant, with the letter saying, "This case may not be considered as an appeal since I do not find in the appendix a file copy of the notice of appeal submitted to the United States Court of Appeals." The Clerk of the Court is mistaken insofar as a file copy of our notice of appeal was and is included in the appendix of the original and all copies of

our Brief of Appellant. A copy of the letter from the Clerk of the Court dated November 23 is Appendix E.

Because of our continued belief that appeal "all the way to the Supreme Court of the United States" is a basic right that every American citizen has and that each of us must exercise in every case where an injustice has been done and the Constitution of the United States attacked, we now resubmit our appeal.

CONSTITUTIONAL PROVISIONS INVOLVED

United States Constitution, Amendment Five:

No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a grand jury ...

United States Constitution, Amendment Fourteen:

Section 1. All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immuni ies of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

— STATEMENT OF THE CASE

On February 1, 1981, our house and its contents at Rural Route 1, Great Bend, Kansas were desroyed by an accidental fire. Our house and its contents were insured through a valid policy of insurance issued by State Farm Fire and Casualty Company. The fire scene was immediately examined and investigated by a deputy of the Kansas Fire Marshal with assistance from the Great Bend Fire Department. The laboratory of the Kansas Bureau of Investigation analyzed the samples of debris obtained and submitted by the Kansas Fire Marshal deputy and found no evidence of arson. The fire scene was examined and investigated on two separate occasions by State Farm Fire and Casualty Company's fire expert, John Winfrey, Kansas City, Missouri, and John Winfrey did not determine the cause of the fire to be arson.

For lack of evidence that a crime had been committed, and, specifically, by us, the State of Kansas did not file a criminal charge of arson against us.

On March 10, 1981, State Farm Fire and Casualty Company hired a private investigative service and laboratory, AID, Inc., Dallas, Texas, to examine and investigate the fire scene. Subsequently, AID, Inc. supplied State Farm Fire and Casualty Company with a report setting forth findings and theories sharply conflicting with the findings and theories set forth by the Kansas Bureau of Investigation Laboratory and State Farm Fire and Casualty Company's own fire expert, John Winfrey.

On April 17, 1981, we filed our claim of loss with State Farm Fire and Casualty Company. On May 18, 1981, State Farm Fire and Casualty Company, while still in fidu-

ciary relationship with us, filed an illegitimate action of declaratory judgment against us in Barton County District Court charging us with the criminal offense of arson and declaring, as a consequence, that our insurance policy was null and void and that it was justified in denying payment to us and our mortgagees. Before suing and charging us with the crime of arson on May 18, 1981, State Farm Fire and Casualty Company did not request that a grand jury be convened to determine whether or not we should be charged and prosecuted by the State of Kansas for the crime of arson. On May 19, 1981, State Farm Fire and Casualty Company notified us, by letter, that it was denying payment of our claim of loss and that it was accusing us of arson. On May 20, 1981, State Farm Fire and Casualty Company caused to be served upon us a summons demanding that we defend against the suit it filed against us or be

declared guilty of the crime of arson.

On August 21, 1981, State Farm Fire and Casualty Company caused to be held, in the office of its attorney, a meeting attended by: the Assistant County Attorney of Barton County; the attorney for the Kansas Fire Marshal's Office; the regional Kansas Fire Marshal deputy; the Great Bend Assistant Fire Chief; the senior claims specialist of State Farm Fire and Casualty Company's General Adjustment Service of Kansas City, Missouri; State Farm Fire and Casualty Company's regional superintendent; and two attorneys for State Farm Fire and Casualty Company, and during which meeting State Farm Fire and Casualty Company argued for a grand jury hearing and the criminal indictment of us, by the State of Kansas, on a charge of arson in order to help State Farm Fire and Casualty Company prevail in

the suit it filed against us in civil court on May 18, 1981; and that by the date of that meeting, August 21, 1981, it had been determined that State Farm Fire and Casualty Company, in accordance with the insurance policy it had issued to us, was to pay the first mortgagee, Colonial Savings and Loan Association, thus establishing the insurance policy as valid with respect to Colonial Savings and Loan Association and thereby defeating any possibility of having the insurance policy declared null and void; and that upon being forced by Colonial Savings and Loan Association (copy of letter, Appendix F) to recognize the insurance policy as valid, State Farm Fire and Casualty Company maliciously, in the name of self-interest and not in the name of justice, attempted to have us criminally charged by the State of Kansas by way of the August 21, 1981 meeting. Subsequently, the State of Kansas told State

Farm Fire and Casualty Company that there was not even enough evidence supporting a charge of arson to warrant impaneling a grand jury to look into the matter and that the State of Kansas had no case against us.

State Farm Fire and Casualty Company caused to be published, in the local and regional newspapers, State Farm Fire and Casualty Company's maliciously distorted version of the case.

On May 17, 1983, State Farm Fire and Casualty Company, as plaintiff-prosecutor, caused us, as charged and accused defendants, to be placed on public trial to defend against its charge of arson. We did defend against its charge of arson and upon completion of the six-week trial the presiding judge told the jury, "The fundamental question is whether or not the

Liggetts burned their house down.", thereby establishing the trial as having been criminal in content, nature, and effect. On June 27, 1983, the jury made known its decision that we did not burn our house down. Also on June 27, 1983, State Farm Fire and Casualty Company wrongfully and publicly accused us of attempting to tamper with the jury that sat in judgment of the case.

Subsequently, State Farm Fire and Casualty Company petitioned the Barton County District Court for a new trial and when such was denied for lack of cause it appealed to the Kansas Court of Appeals which transferred the case directly to the Justices of the Kansas Supreme Court who, after oral argument and the acceptance of our direct appeal for justice (letter of appeal, Appendix G), said in their unanimous opinion on October 26, 1984, "Nothing would be gained by detail-

ing the evidence, which was abundant but sharply conflicting. By its verdict, the jury has resolved the fact issues, totally rejecting State Farm's version."

On October 21, 1985, we filed the instant civil action in the United States District Court contending that State Farm Fire and Casualty Company, through its prior action against us, violated the Constitution of the United States, abused judicial process, and maliciously prosecuted us. In our Complaint, we set forth our supporting reasons and arguments and, as the relief sought, we asked: 1) that we be allowed to present our case to a jury; 2) that State Farm Fire and Casualty Company be compelled to make a published and widely circulated public apology so as to assure the American people that it, contrary to its prior attitude and action

toward its clients, is worthy of public trust and is not threatening to the individual citizen; 3) that, in assurance that it will never again attempt to wrest civil authority from the people through holding the Constitution of the United States in disdain, as the way to help State Farm Fire and Casualty Company, and as the way we all get something right from something wrong, State Farm Fire and Casualty Company be punitively fined two hundred fifty million (250,000,000) dollars, approximately one dollar for every citizen it threatened with its prior action against us, to be held in trust for the development of the World Peace Academy; and 4) that, because of what State Farm Fire and Casualty Company did to our lives, it be required to pay to us the sum of fifty million (50,000,000) dollars. Through payment of the monetary awards we ask, State Farm Fire and Casualty Company will help bring peace

and the nonhurting way to relate to the people of the world.

Subsequently, in its Answer to our Complaint, filed on November 29, 1985, State Farm Fire and Casualty Company made statements directed to creating the effect in the public record of the case that we are arsonists, criminals, and, relative to such, in our Response submitted on December 19, 1985, we notified State Farm Fire and Casualty Company of our demand that it refrain from making further libelous statements to the public record of the case and that as a consequence of the libelous statements put forth in its Answer we shall ask the jury and court, at the time of trial, to punitively fine State Farm Fire and Casualty Company an additional twenty-five million (25,000,000) dollars, to be placed in trust for the development of the World

Peace Academy.

Additionally, on June 30, 1986, State Farm Fire and Casualty Company, in Defendant's Memorandum in Support of Its Motion to Dismiss or, in the Alternative, to Compel Attendance at Depositions, and in Opposition to Plaintiffs' Objection to and Motion to Quash Notice to Resume Depositions, page 10, publicly accused us in the record of having filed, with criminal intent, a false Certificate of Service; and it did so without any investigation directed toward determining whether or not we were innocent of any wrongdoing in what it considered to be a discrepancy, with respect to postmark, for which it accused us of being criminally responsible. Relative to that charge and accusation of criminal perjury and, specifically, because of its being another example of State Farm Fire and Casualty Company presuming and

publicly yelling "guilt" while denying the presumption of innocence, and while doing nothing to discover innocence, on July 7, 1986, in our Objection to Defendant's Motion to Dismiss or, in the Alternative, to Compel Attendance at Depositions, we notified State Farm Fire and Casualty Company of our intention to ask the court and jury, at the time of trial, to punitively fine State Farm Fire and Casualty Company an additional fifty million (50,000,000) dollars, also to be held in trust for the development of the World Peace Academy.

CONTENTIONS AND ARGUMENT

a. Defendant should not have relied upon advice of its counsel as to the institution and development of the prior action when such action constituted a drastic departure and deviation from the customary

and accepted way defendant relates judicially to its clients and after plaintiffs had repeatedly warned defendant of its counsel's ill will toward the plaintiffs and of plaintiffs' fears that defendant's counsel would mislead defendant in any and all matters pertaining to plaintiffs.

b. Defendant acted with malice and attempted to creat probable cause by conducting an intentionally negligent and insufficient investigation of the plaintiffs' fire loss.

c. Defendant acted with malice and attempted to create probable cause by deliberately failing to use reasonable diligence and inquiry to ascertain the facts in the prior action.

d. Defendant acted with malice and attempted to create probable cause by conspir-

ing amongst itself to behave and act in an unethical and illegal manner by wrongful use of judicial process in the prior action.

e. Defendant acted with malice by commencing the prior action before notifying plaintiffs that defendant was denying plaintiffs' claim of loss.

f. Defendant acted with malice and attempted to create probable cause by commencing the prior action in Barton County, Kansas for the purpose of obtaining a jury defendant thought would be prejudiced against the plaintiffs.

g. Defendant acted with malice by commencing the prior action for the purpose of preventing the plaintiffs to commence action against defendant, thereby labeling the plaintiffs as defendants and accused arsonists in what was perceived by the

general public to be a criminal trial.

h. Defendant acted with malice and attempted to create probable cause by destroying evidence detrimental to State Farm Fire and Casualty Company and beneficial to us in the prior action.

i. Defendant acted with malice and attempted to create probable cause by fabricating evidence beneficial to State Farm Fire and Casualty Company and detrimental to us in the prior action.

j. Defendant acted with malice when, on August 21, 1981, three months after having filed the prior action, it held in the office of its counsel a meeting attended by numerous public officials and representatives of defendant for the express purpose of having a grand jury convened and the plaintiffs criminally charged, arrested, prosecuted, and

possibly imprisoned for the purpose of helping defendant prevail in the prior action.

k. There is never probable cause for an insurance company to assume the role of plaintiff-prosecutor and criminally prosecute its clients in civil court on a charge of criminal offense that the insurance company has made when the state has determined that those clients should neither be criminally charged nor criminally prosecuted.

l. Defendant has not paid in full and satisfied the judgment of the prior action in light of the fact that defendant cheated plaintiffs out of eleven (11) days interest on said judgment by issuing to the plaintiffs a sight draft rather than a check.

m. An insurance company should not be allowed to use the charge of criminal

offense as a weapon of offense against the citizen in civil court in replacement of the settled rule that the accusation of criminal offense is not wrong when used as a weapon of defense in civil court.

n. The citizen, any business corporation, or any governmental body should not be allowed to use the charge of criminal offense as a weapon of offense against any citizen, any business corporation, or any governmental body in civil court in replacement of the settled rule that the accusation of criminal offense is not wrong when used as a weapon of defense in civil court.

o. It is unConstitutional and in violation of Article Five of the Bill of Rights for the business corporation to prosecute the citizen in civil court on the business corporation's charge of criminal offense when the government of the state has determined that

that same citizen should neither be criminally charged nor criminally prosecuted.

p. The sword of justice, when wielded as a weapon of offense, belongs in the hands of the people and not in the hands of corporate business, i.e., the prosecution of criminal offense is the function of the state, the government, and is not the function of corporate business.

q. The encroachment of corporate business into the province of governmental authority in the prosecution of criminal offense constitutes a threat to the liberty and security of the American people.

r. Perhaps there should be an amendment to the Constitution of the United States that clearly defines the judicial relationship between the citizen and corporate business and that suffices to prevent the de-

struction of the individual citizen by the ever increasing power and influence of corporate business in our modern democracy.

s. Defendant acted without probable cause in commencing and maintaining the prior action against the plaintiffs.

t. Defendant acted with malice in commencing and maintaining the prior action against the plaintiffs.

u. The prior action terminated in favor of the plaintiffs.

v. The plaintiffs sustained damages because of the prior action.

w. Defendant acted with malice and without probable cause when it wrongfully and publicly accused the plaintiffs of attempting to tamper with the jury that sat in judgment of the prior action.

x. Defendant acted with malice and without probable cause when, in the proceedings of the instant action, it made written statements to the effect that the plaintiffs are arsonists and that the plaintiffs committed perjury by submitting a false Certificate of Service.

y. The prior action, as instituted, developed, and maintained by defendant, was unethical, illegal, and unConstitutional and constitutes an attack on and a threat to the Constitution of the United States, the people it protects, and the democracy it defines.

z. The plaintiffs were not responsible, in any way, for the institution of defendant's prior action against them.

aa. Defendant, through the prior action, unjustly disrupted the peace of and forever

altered the lives of the plaintiffs.

We believe that what State Farm Fire and Casualty Company attempted to do to us, destroy us as individual citizens, is demonstrative of what it could and would do to any citizen and that by filing the prior action against us it was State Farm Fire and Casualty Company's fully conscious intent to develop the example around which it would change the way corporate business relates judicially to the individual citizen. It is our contention that State Farm Fire and Casualty Company maliciously developed, filed, and prosecuted the "upside-down case" against us because it allowed itself to become persuaded that we were an easy target and the example it needed in order to establish and publicize as fact that an insurance company can and will charge any citizen with a crime and then, while assuming the role of plain-

tiff-prosecutor, use all its financial power and influence to prosecute that citizen in civil court as though that citizen were criminal even though the government of the state has determined that that citizen should not be criminally charged and should not be criminally prosecuted.

Corporate business cannot be allowed to place the citizen on trial and demand that the citizen either successfully defend against a criminal charge or be declared guilty of that charge. The prosecution of criminal offense must remain the duty and responsibility of the people, the state, the government, only, i.e., the sword of justice, when wielded in offense, belongs only in the hands of the people, not in the financially powerful, profit-motivated hands of corporate business. Article Five of our Bill of Rights decrees and dictates

that criminal justice is a matter of political, not economic, concern.

The decisions of Chief Judge O'Connor and the United States Court of Appeals are in error and are wrong for us and for every citizen of our democracy, because those decisions do not allow for the judicial redress of State Farm Fire and Casualty Company's open and arrogant, violent and vicious, attack on us and the Constitution of the United States, and do not defend the Constitution and the people it protects against future attacks. Those decisions leave our Constitution violated, unattended, and unprotected and do nothing but signal and invite the other sharks of corporate business. We dare not allow State Farm Fire and Casualty Company to go free and unchanged, and unafraid to repeat the attack, because, if we do, it will just be back and

bring its friends. It is not enough that State Farm Fire and Casualty Company paid us what it owed us. We had to fight with everything we had to get it off of us and to keep it from tearing us apart, and we know how dangerous it is. We do not want to kill it just because it tried to kill us, all we want to do is make sure that it knows that it has got to leave us, the nonhurting free and self-determined individual, and the Constitution of the United States alone.

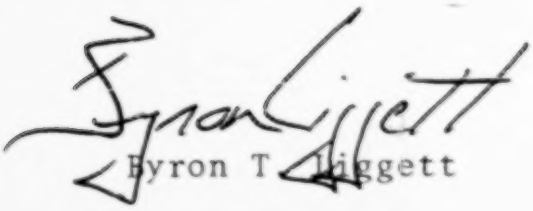
Our courts are our law and must protect and preserve our Constitution against all attacks and all threats.

Let the record show that two individual citizens, armed only with the Constitution of the United States of America and their love for the freedom it defines and guaran-

tees, do oppose the enslavement of America by the gargantuan, rapidly growing corporate factions that have developed within our nation since its inception - factions which James Madison warned us about - and that these same two citizens will not "go gentle into that good night" of totalitarianism, but will "rage against the dying of the light" of democracy. Let the decision of the Supreme Court of the United States of America show that the individual American citizen is endowed by our Bill of Rights with certain inalienable rights that cannot be denied or abridged by anyone or anything and that the political power of the individual citizen is not subjugated by the economic power of the large business corporations. In this two hundredth year of our Constitution, prove to us all that we are not just guarding a piece of parchment, but that we are

guarding the ideas, concepts, and principles that define us as a nation of free and self-determined people.

Respectfully submitted,



Byron T. Liggett

for

Byron T. Liggett and Lorrieta A. Liggett
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CERTIFICATE OF SERVICE

We certify that on December 24, 1987, the original and forty copies of the foregoing Jurisdictional Statement were mailed to:

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Byron T. Liggett

for

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APPENDIX A

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF KANSAS

Civil Action Case No. 85-2538-0

BYRON T. LIGGETT AND LORRIETA A. LIGGETT
Plaintiffs
vs
STATE FARM FIRE AND CASUALTY COMPANY
Defendant

MEMORANDUM AND ORDER
Filed March 19, 1987

This matter arises both out of a fire that destroyed the home of plaintiffs, Byron T. Liggett and Lorrieta A. Liggett, and a subsequent declaratory judgment action filed in Kansas state court by defendant State Farm Fire and Casualty Company ("State Farm"). In its declaratory judgment action, State Farm asserted that the Liggetts intentionally set fire to their home, thereby voiding their insurance policy with State Farm. The jury returned a verdict in favor of the Liggetts on State Farm's claim, but against

the Liggetts on all of their counterclaims. The Liggetts filed the instant action on October 21, 1985, alleging malicious prosecution, violation of the fifth amendment, libel, and various other claims.

Three motions are now pending before the court: (1) defendant State Farm's motion for partial summary judgment and to strike portions of plaintiffs' complaint; (2) State Farm's motion in limine to exclude certain evidence from the trial; and (3) State Farm's motion for summary judgment. State Farm's motions for partial summary judgment and for summary judgment, taken together, request the court to enter judgment as a matter of law, on all of the Liggetts' claims. Because we agree that summary judgment is appropriate on all of those claims, we shall grant both of those motions, making State Farm's motion in

limine moot.

Before turning to the motions for summary judgment, we emphasize the following legal principles: The movant is entitled to summary judgment only if "the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law." Fed. R. Civ. P. 56(c). No factual dispute is "genuine" unless "a reasonable jury could return a verdict for the nonmoving party." Anderson v. Liberty Lobby, 91 L.Ed.2d 202, 211-12 (1986). Furthermore, the standard for summary judgment "mirrors the standard for a directed verdict under Federal Rule of Civil Procedure 50(a), which is that the trial judge must direct a verdict if, under the governing law, there can be but one reasonable conclusion as to the verdict."

Id. at 213. In addition, summary judgment must be entered "after adequate time for discovery and upon motion, against a party who fails to make a showing sufficient to establish the existence of an element essential to that party's case, and on which that party will bear the burden of proof at trial." Celotex Corp. v. Catrett, 106 S. Ct. 2548, 2552-53 (1986). Finally, in making these determinations, the court must view the record in the light most favorable to the nonmoving party. Bee v. Greaves, 744 F.2d 1387, 1396 (10th Cir. 1984) cert. denied, 469 U.S. 1214 (1985).

I Facts

The Liggetts bought a house in the fall of 1980, in rural Barton County, Kansas, near Great Bend. They insured the house and its contents with State Farm. On February 1, 1981, shortly before 2:00 a.m.,

one of the Liggetts' neighbors, a Mr. Romine, observed from his bedroom window that the Liggetts' house was on fire. Romine lived 1/2 to 3/4 of a mile from the Liggetts' house. At 1:58 a.m., Romine's wife called the Great Bend Fire Department to report the fire. Mr. Romine and a neighbor boy, Kevin Mauler (who had also seen the fire), drove to the fire scene and found the house to be "really burning." Mauler later told an investigator from the State Fire Marshal's office that the house was already totally involved in fire. By 2:07 a.m., two deputy sheriffs arrived at the scene, and Assistant Fire Chief Christiansen and the fire department arrived between 2:07 and 2:15, probably closer to 2:07. Because the house was completely engulfed in flames, the fire department decided not to attempt to extinguish the flames.

While investigating the areas around the

home, one of the deputy sheriffs noticed tire prints and footwear impressions in the snow on the driveway leading up to the residence. Other tire tracks and shoe prints were found, some of which were near the house, some of which went from the house to the entrance at the road, and some of which went from the house back north up to the drive. After the Liggetts arrived at the scene, Byron Liggett identified at least some of the shoe prints as his own.

The Liggetts, who had been at their other house in town, arrived at the fire scene at approximately 3:00 a.m. that morning. When Assistant Fire Chief Christiansen asked them what time they had last been at their rural house, the Liggetts stated that they had been there that evening unpacking and had left the scene around 1:30 a.m. They also told Deputy Sheriff Peterson that they had left the rural house at 1:30 a.m.

Moreover, within an hour or two after discovery of the fire, they each gave a handwritten "Voluntary Statement" to Deputy Peterson, again stating that they had left at approximately 1:30 a.m. Later in the day, Deputy State Fire Marshal David Yates and Christiansen went to the Liggetts' in-town residence and again asked them to state the exact time that they had left their country home. Their answer was the same. In fact, they repeated that answer in a sworn statement to Gene Kvassey of State Farm on February 11, 1986 (plaintiffs seemingly dispute this, but the sworn statement speaks for itself: "(I)t was somewhere around 1:30. It had to be close to that, around 1:30, because ... I looked at my watch ...." Sworn Statement, at 20); to State Farm's attorney in a sworn statement taken by the attorney on May 6, 1981; and in their sworn depositions on November 1, 1982.[1]

1/ In their response to defendant's summary judgment motion, plaintiffs assert that "(h)ad State Farm... used reasonable or diligent inquiry to determine the time the Liggetts left their home, State Farm ... would have been able to easily determine that the Liggetts did not leave their home at 1:30 a.m., but closer to 12:24 a.m." Plaintiffs' Response, at 12. Plaintiffs do not explain, however, why they are now certain that the time was more than an hour earlier than they had previously stated. Nor do they indicate how State Farm could have determined that plaintiffs' num- erous statements as to their departure time were wrong, even assuming that State Farm had a duty to challenge plaintiffs' sworn statements.

At approximately 10:00 a.m. on the morning of the fire, Christiansen and Deputy Fire Marshal Yates, an investigator for the State Fire Marshal's Office, went to the fire scene to investigate, but found it too hot to do any digging. Later that morning, they activated the Barton County Arson Investigation Squad. In his meeting with Yates, Christiansen stated that if the Liggetts had left their country home at 1:30 a.m. and the house was totally in-

volved in fire by 1:58 a.m., "that alone ... was suspicious." Similarly, when told that the Liggetts reported that they had left at 1:30, Mr. Romine, the neighbor who first discovered the fire, told Yates: "If anyone left there at 1:30 a.m. they had to leave with the house on fire."

On the afternoon of February 1, Yates and Christiansen searched through the debris to determine the cause of the fire. After clearing the debris, they found spalling of the concrete just to the south of a wood-burning fireplace in the basement. (Spalling is the breakup of concrete due to exessive heat and moisture in the concrete and is commonly associated, by fire investigators, with the use of an accelerant such as gasoline or other flammable substances.) Both investigators concluded that afternoon that the fire was caused by arson.

On February 2, 1981, Yates contacted George Rogge, the Chief Investigator for the State Fire Marshal's Office, to enlist his aid in the investigation. After clearing away more debris in the basement, they discovered another area of spalling on the floor at the end of the basement stairs. Rogge, after examining the scene, agreed that the fire had been caused by arson.

On February 6, 1981, Assistant Fire Chief Christiansen prepared his report, which identified the Liggetts as the last persons in the house and concluded that the fire "appears to (have been) set." Similarly, on February 9, 1981, Deputy State Fire Marshal Yates, in his Preliminary Investigation Report on the fire, concluded that in his "opinion the fire is a set fire.... It is my feeling that a

flammable was poured on the basement floor and set on fire. I feel this is evident as one can see a burn pattern on the concrete floor showing extreme heat." Later, on February 15, 1981, after examining a brick chimney at the insistence of Byron Liggett, Yates reaffirmed his opinion that "the fire is a set fire." Both Christiansen and Yates agreed that, "based upon a reasonable certainty," the Liggetts were the persons who set the fire. In fact, Christiansen agreed, in a deposition, that the case against them was "as strong a case of people setting fire to their own house as (he had) ever seen."

On February 18, 1981, Byron Liggett went to the central fire station for the Great Bend Fire Department. Yates began to read him his Miranda rights, which he voluntarily waived. Yates and Christiansen then told Liggett that they believed the fire began

in the basement and showed him pictures of the concrete spalling. During this conversation, Liggett stated: "Are you trying to say that the walls were painted down with a flammable." This statement surprised Christiansen because the phrase used by Liggett is used by fire departments and by persons who "might light fires, cause fires."

State Farm, on March 6, 1981, hired AID Consulting Engineers, Inc., which has expertise in the determination of the cause and origin of fires, to investigate the cause of the fire. William Lute, an employee of AID, inspected the fire scene on March 11, 1981. His inspection revealed:

> a large amount of concrete spalling indicative of a flammable liquid burning. The spalled areas were surrounded by black carbon rings also indicative of a flammable liquid burning. The spalling appears to be in a "trail" from the wood burning furnace to the stairway

> area. Spalling was not detected at other areas of the first floor.

AID Report of April 8, 1981 (Exh. X-1), at 2.

Lute obtained samples of various items at the fire scene for later analysis at the AID laboratory. Using gas chromatography, the AID laboratory detected residues of lead and bromine and noted that the "only product commercially available of this nature is leaded gasoline." Id. at 4. In his report, Lute concluded:

> From the physical evidence observed at the fire scene and as a result of the laboratory analysis, it is my opinion that this fire was intentionally set with gasoline used as an accelerant. Burn patterns indicate the gasoline was poured on the floor near the furnace and across the floor to the stairs. The gasoline accumulated under the stairs and in an area near the center of the room, causing the spalled concrete. In all probability the gasoline was poured on the second floor also, although the structure was too severely burned to obtain a proper sample for analysis.

Id. at 4.

The Kansas Bureau of Investigation ("KBI") also conducted a laboratory analysis of the fire debris. Because the KBI's analysis did not detect the presence of hydrocarbons, it did not conclude that the fire was caused by arson. However, William Pyle, a chemist for the KBI, testified that the equipment in the KBI laboratory at the time of his test was "a piece of junk ... at least eight years outdated." Thus, although Pyle indicated in his report that no hydrocarbons were detected, he also stated that they could be there and he just could not find them.[2]

2/ Plaintiffs also assert that John Winfrey, a State Farm fire expert, twice examined the fire scene, but "did not determine the cause of the fire to be arson." Plaintiffs' Resonse to Defendant's Summary Judgment Motion, at 2. As State Farm notes, however, plaintiffs have offered no evi dence, in any form, that Winfrey made any investigation, completed any report, or made any findings with regard to the

> Liggett fire. Because plaintiffs have no admissible evidence to support their allegation, no genuine controversy exists as to whether Winfrey made such an investigation. Fed. R. Civ. P. 56(e); McCormick v. Ross, 506 F.2d 1205, 1208 (8th Cir. 1974).

On April 17, 1981, the Liggetts filed a proof of loss with State Farm for replacement of their residence, personal property lost in the fire, and miscellaneous expenses. State Farm, by a letter dated May 15, 1981, notified them that it was denying their claim on the ground that the fire was caused by their "deliberate act, design or procurement."

State Farm filed a declaratory judgment action against the Liggetts in Kansas state court on May 18, 1981. In its declaratory judgment action, State Farm alleged that the Liggetts had breached the insurance contract because they had misrepresented the amount of loss they had suffered and, most

importantly, because the loss was caused by their deliberate act, design, or procurement. The Liggetts asserted six counter claims in that action, including claims for invasion of privacy, outrage, and bad faith.

On August 21, 1981, according to the Liggetts, State Farm caused a meeting to be held, which was attended by the Assistant County Attorney of Barton County, Kansas; the attorney for the Kansas Fire Marshal's Office; the regional Kansas Fire Marshal Deputy; the Great Bend Assistant Fire Chief, and several State Farm officials. State Farm called the meeting, they maintain, to persuade the state officials to pursue a grand jury indictment on a charge of arson. Apparently, no grand jury was impaneled.

Shortly before the trial of the state

declaratory judgment action was to begin in May of 1983, the Liggetts hired Dr. Ronald Wells to investigate the cause of the fire and to testify on their behalf. Wells began his investigation on May 11, 1983, more than two years after State Farm had filed the action. Wells testified at the trial that the spalling of the concrete was caused by poor concrete and the extreme heat of the burning house. He also disagreed with the other findings and conclusions of the AID report.

On June 27, 1983, the jury returned a verdict in favor of the Liggetts on State Farm's declaratory judgment action, but against the Liggetts on each of their counterclaims. The trial court denied State Farm's motion for a new trial and the Kansas Supreme Court affirmed. State Farm Fire & Cas. Co. v. Liggett, 236 Kan.

120, 689 P.2d 1187 (1984). The Liggetts subsequently filed the instant action for, among other things, malicious prosecution.

II. State Farm's Motion for Partial Summary Judgment

In its motion for partial summary judgment, State Farm requests the court to enter judgment in its favor on three of the Liggetts' claims: (1) their claim for alleged violations of their rights under the fifth amendment to the United States Constitution; (2) their claim that State Farm maliciously attempted to have criminal charges brought against them; and (3) their claim for libel. The Liggetts have not responded to the motion. We shall discuss the claims separately.

In paragraph 22 of their complaint, the Liggetts allege:

> That what State Farm Fire and Casualty Company did to the Liggetts, through placing them on public trial to defend against State Farm Fire and Casualty Company's charge of arson, is a crime as defined by the Constitution of the United States and is in direct violation of Article Five of the Bill of Rights that states, "No person shall be held to answer to a capital, or otherwise infamous crime, unless on a presentment or indictment of a grand jury."

Moreover, in their answer to State Farm's second set of interrogatories, the Liggetts stated that "(t)he specific and particular statute under or pursuant to which this action is brought is Article V of the Bill of Rights of the Constitution of the United States." We agree with State Farm that the Liggetts cannot, as a matter of law, prevail on their fifth amendment claim.

First, it is well settled that the fifth amendment applies only to governmental action, not to action taken by private persons, including corporations. Public Utility Commission v. Pollack, 343 U.S. 451, 461 (1952).

Second, the fifth amendment requires a grand jury indictment only for the prosecution of federal crimes, not state crimes such as arson.

Third, the Liggetts' assertion that State Farm could not affirmatively seek a declaration of noncoverage, which is at the heart of their complaint, is completly erroneous. The Liggetts admit that if they had sued State Farm for denial of their insurance claim, State Farm could legitimately have defended the action by asserting that the Liggetts burned their house. But State Farm's filing of the declaratory judgment action, the Liggetts contend, was an improper attempt "to initiate a new way for the corporation to relate judicially to the individual client." Of course, that contention is frivolous. Kansas law clearly gives parties

to written contracts the right to file declaratory judgment actions "in cases of actual controversy ... involving the validity or interpretation of ... instruments of writing." K.S.A. 60-1701. Thus, as State Farm states, "it is beyond question that an insurance company has the right under Kansas law to bring a declaratory judgment action against its own insured seeking a declaration of non-coverage." Defendant's Supplemental Memorandum, at 5 (citing Central Security Mutual Insurance Co. v. DePinto, 235 Kan. 331, 681 P.2d 15 (1984)).

Finally, the Liggetts claim that State Farm illegally and unconstitutionally filed the declaratory action in Barton County, Kansas, thereby depriving them of their right to sue in federal court on the basis of diversity. But they cite no authority for that proposition and, indeed, venue was

proper in Barton County, the county of the Liggetts' residence. As the Kansas Supreme Court held in Alliance Life Insurance Co. v. Ulysses Volunteer Fireman's Relief Association, 215 Kan. 937, 529 P2d. 171 (1974), to protect the insured from having to defend far from home, venue in a declaratory judgment action by an insurance company is proper in the county where the insured resided, at least when the breach occurred there or if payment would be made there. Id. at 941-42, 529 P.2d at 175-76. Accordingly, because the Liggetts cannot establish a violation of the fifth amendment or any other constitutional provision, we shall grant partial summary judgment in favor of State Farm on that claim.

We next turn to the Liggetts' claim that State Farm attempted to have criminal

charges brought against them. In paragraph 14 of their complaint, the Liggetts allege:

> State Farm Fire and Casualty Company attempted to alter the attitude of the case from civil to criminal; and that State Farm Fire and Casualty Company maliciously attempted to have the Liggetts criminally charged by the State by way of the August 21, 1981 meeting.

Moreover, in paragraph 15, they state:

> (S)ubsequently, the State of Kansas told State Farm Fire and Casualty Company there was not even enough evidence supporting the charge of arson against the Liggetts to warrant impaneling a grand jury to look into the matter and that the case was not criminal.

As State Farm suggests, these allegations do not state a claim upon which relief can be granted. The elements of an action for malicious prosecution of a criminal proceeding are set forth in the Restatement (Second) of Torts at section 653:

> A private person who initiates or procures the institution of criminal proceedings against another who is not guilty of the offense charged is subject to liability for malicious prosecution if

> (a) he initiates or procures the proceedings without probable cause and primarily for a purpose other than that of bringing an offender to justice, and
>
> (b) the proceedings have terminated in favor of the accused.

(Emphasis added.)

Here, even assuming that State Farm lacked probable cause for seeking the filing of criminal charges (a large assumption), it is clear that State Farm did not institute criminal proceedings. As Comment d to section 654 of the Restatement states: "formal action (such as the issuance of a warrant or summons) must be taken by an official or tribunal before there can be that institution of criminal proceedings which the plaintiff must prove in order to make his accuser liable under the rule stated in § 653." Moreover, Comment c to section 653 hammers the point home by noting that "(t)he making of the charge

is not actionable ... unless criminal proceedings are instituted against the accused by (a) tribunal or official ...."

Here, as the Liggetts themselves note, the state officials declined to press criminal charges. Hence, the Liggetts cannot, as a matter of law, satisfy a crucial element of their claim. Summary judgment on that claim is, thus, appropriate. Celotex, 106 S.Ct. at 2552-3.

The last claim on which State Farm seeks partial summary judgment is the Liggetts' claim for libel. That claim consists of two categories of allegedly libelous statements. First, the Liggetts allege that during the pendency of the state proceedings, State Farm caused its "maliciously distorted version of the case to be published in local and regional newspapers." Second, they allege that State Farm has

made libelous statements during the course of the instant litigation in its answer and in other pleadings. We conclude that State Farm is entitled to summary judgment on both categories of statements.

First, with respect to the first category, the Liggetts' libel claim is barred by the statute of limitations. Each of the newspaper or other media accounts of which the Liggetts complain were published in 1981, in the months after the fire, or in 1983, during and immediately after the trial of the declaratory judgment action. It is undisputed that the last of the allegedly libelous articles was published on September 9, 1983.

The Liggetts filed a counterclaim for libel in the declaratory judgment action, but later voluntarily withdrew it during the state trial, which ended on June 21,

1983. They filed the instant action, including their libel claim, on October 21, 1985, more than two years after the last published article. Under these undisputed facts, their libel claim is clearly barred by the one year statute of limitations for such claims. K.S.A. 60-514. And, as State Farm correctly argues, their claim is not saved by the Kansas "savings statute," K.S.A. 60-518. That statute provides that if the plaintiff timely commences an action, but fails in that action otherwise than upon the merits, the plaintiff may file a new action within six months of the "failure" of the prior action. Here, the Liggetts withdrew their libel counterclaim in June of 1981 and did not refile the claim until October 21, 1985, exactly fifteen months later. Their claim is, thus, time-barred.

As to the second category of statements

about which the Liggetts complain (that is, the allegedly libelous statements made in pleadings filed in the instant case), State Farm enjoys absolute immunity. Each of the statements were made in the course of judicial proceedings and Kansas law clearly provides that such statements are absolutely privileged. As the Kansas Supreme Court stated in Froelich v. Adair, 213 Kan. 357, 516 P.2d 993 (1973):

> Judicial proceedings are absolutely privileged communications, and statements in the course of litigation otherwise constituting an action for slander, libel, or one of the invasions of privacy torts involving publication, are immune from such actions. They are privileged communications because of the overriding public interest in a free and independent court system. This absolute privilege extends to parties to private litigation and to anything published in relation to a matter at issue in court, whether said in pleadings, affidavits, depositions or open court.

Id. at 360, 516 P.2d at 997. See also Clear Water Truck Company, Inc. v. M.

Bruenger & Co., 214 Kan. 139, 141-43, 519 P.2d 682, 685-86 (1974). Accordingly, we shall also grant summary judgment in favor of State Farm on the Liggetts' libel claim.

III. State Farm's Motion for Summary Judgment

State Farm has also moved for summary judgment on the Liggetts' claim for malicious prosecution of the declaratory judgment action (the only claim remaining). Because the Liggetts cannot, as a matter of law, establish at least one of the essential elements of that cause of action, we shall grant the motion.

To maintain an action for malicious prosecution of a civil action, the plaintiff must prove the following elements:

> (a) That the defendat initiated, continued, or procured civil procedures against the plaintiff;
>
> (b) That the defendant in so doing

acted without probable cause;

(c) That the defendant acted with malice, that is he acted primarily for a purpose other than that of securing the proper adjudication of the claim upon which the proceedings are based;

(d) That the proceeding terminated in favor of the plaintiff;

(e) That the plaintiff sustained damages.

Nelson v. Miller, 227 Kan. 271, 276, 607 P.2d 438, 443 (1980) (emphasis added). See also Restatement (Second) of Torts § 674. Here, the Liggetts cannot, on the undisputed evidence, establish that State Farm lacked probable cause in bringing or maintaining the state action for a declaration of noncoverage.

First, the Liggetts' position that State Farm lacked probable cause is based upon a gross misunderstanding of the law. That misunderstanding is best illustrated by the following excerpts from the Liggetts' depositions, which concluded on August 28,

1986:

Q. What facts do you know of that support your allegation that the action was brought by State Farm without probable cause?

A. (By Dr. Liggett) There could be no probable cause. There can be no probable cause for taking an American citizen, stripping him completely of his constitutional rights and protection and then trying to execute that person, trying to destroy that person in civil court upon a criminal charge and a criminal prosecution. There can be no probable cause for that.... That is the main issue of this case.

Joint Deposition of Byron and Lorrieta Liggett, Aug. 28, 1986, at 74 (emphasis added).

Q. You just come on and give me all of it that you know of, all of the facts and bases of your contentions (that State Farm lacked probable cause).

A. (By Mrs. Liggett) Wrongful use of judicial process or abuse of judicial process.

Q. What is that, please elaborate?

A. (By Mrs. Liggett) That's using a defense as an offense. That's wrongful use of judicial process, whereby they sued us before they denied the claim.

Q. That you contend is the basis for saying they had a lack of probable cause?

A. (By Dr. Liggett) Of course. Because, you see we understand that with respect to the (settled) rule, it's accepted for an insurance company to call its clients arsonists as a defense. That's what the arson defense is.... (L)et's assume, in our case, we filed a claim. State Farm ... had, let's say, denied the claim and then done nothing. Then they would have been fully justified when we then turned around and sued them in federal court, in challenge of their denial of the claim, ... it would be legal, ... it wouldn't be malicious prosecution if State Farm ... then used that accusation of criminal defense as a defense in civil court. But to use it as an offense--

* * *

What is malicious, what is without probable cause is that State Farm ... didn't wait for us to sue them, no, before they even denied the claim, they sued us, while we were in a fiduciary relationship with State Farm ... they sued us.

Id. at 75-77 (emphasis added).

Q. Assume that the deputy sheriff was driving by that house that night, and made a statement that he saw you pour gasoline and throw a match to your house, and that became a part of the

public record. Is it your contention that State Farm would not have had the right to bring suit against you alleging you had burned --

A. (By Dr. Liggett) Yes, of course....

* * *

Q. (N)o matter what the evidence or the facts were that were in the knowledge of State Farm ... they lacked probable cause to sue you ... ?

A. That is correct ....

Id. at 83-84.

As these excerpts strikingly demonstrate, the Liggetts make no allegation that State Farm lacked a factual basis for bringing its state action. Indeed, they assert that no matter how strong the facts are, an insurance company, as a matter of law, may never bring a declaratory judgment action against its insured, even if the insured admittedly committed a criminal act that voids the policy. Of course, that proposition is absurd. As we stated earlier, it is well settled

that an insurance company may legitimately file such an action, Central Security Mutual Insurance Co. v. DePinto, 235 Kan. 331, 681 P.2d 15 (1984). Moreover, it may do so even if the alleged basis of noncoverage arises out of conduct that could be characterized as criminal. See American States Insurance Co. v. Ehrlich, 237 Kan. 449, 701 P.2d 676 (1985); Casualty Reciprocal Exchange v. Thomas, 7 Kan. App. 2d 718, 647 P.2d 1361 (1982).

But even if the Liggetts were contending that State Farm did not have probable cause as a factual matter, we would conclude that State Farm had probable cause as a matter of law. Probable cause for filing a civil action exists "when there is a reasonable ground for suspicion, supported by circumstances sufficiently strong in themselves to warrant a cautious, or

prudent, man in the belief that the party committed the act of which he is complaining." Nelson v. Miller, 227 Kan. at 277, 607 P.2d at 443-44. Significantly, "(i)f the facts are undisputed, the question of probable cause is one for the court to decide as a matter of law." Id. at 277, 607 P.2d at 444; Parli v. Reed, 30 Kan. 534, 2 P. 635 (1883).

Here, it is undisputed that Great Bend Assistant Fire Chief Christiansen, Deputy State Fire Marshal David Yates, and the Chief Investigator for the State Fire Marshal's Office, George Rogge, all agreed that the fire was caused by arson. Moreover, the Liggetts do not deny that both Christiansen and Yates agreed, based on the rapid burning and total involvement of the house at the time the fire was reported -- within half an hour of when the Liggetts repeatedly

stated that they left the house -- that the Liggetts were responsible for the fire. Nor do they deny that AID Consulting Engineers, hired by State Farm to investigate the cause of the fire, concluded from its laboratory analysis that gasoline had been used as an accelerant and that the fire had been intentionally set.

Finally, Dr. Liggett himself admitted that State Farm had probable cause, based upon his and his wife's repeated statements that they had left the house at 1:30 a.m. At the state trial, he testified:

> Q. Would you not agree, sir, that insofar as the authorities are concerned at State Farm, that if they are still believing the truth of your statement that you left at 1:30, that that would certainly be good and sufficient evidence on their part to think that you and your wife had something to do with the setting of this fire, would you not?
>
> A. If we had left there at 1:30, I would agree but obviously we didn't leave there at 1:30. We had left there much earlier.

Trial Transcript, at 3245 (emphasis added).

Of course, as we noted in the statement of facts, the Liggetts told investigators and State Farm officials, repeatedly, that they had left the house at approximately 1:30. They made such a statement to Christiansen and separately to Deputy Sheriff Peterson on the night of the fire. They each made the statement in a handwritten statement later that morning and repeated it to both Christiansen and Yates later in the day, after being questioned specifically about the exact time they had left the home. Moreover, they repeated their story in a sworn statement to Gene Kvassey of State Farm on February 11, 1981; in a sworn statement to State Farm's attorney on May 6, 1981; and in their sworn depositions given on November 1, 1982. In fact, they never budged from the statement

of time until the trial, where they apparently asserted that they had actually left at 12:24. They have not explained why they are now so sure of the precise time or why their earlier statements, many of them made within hours of their departure, had been so wrong. In any event, because the Liggetts repeatedly told State Farm that they had left the house a mere half hour before it was consumed in fire, State Farm justifiably relied on their estimation of the time in deciding whether probable cause existed to believe the Liggetts set the fire; State Farm had no reason to do otherwise.

The Liggetts note, however, that the state officials declined to prosecute them for arson and that the KBI found no evidence of gasoline. They also point to the trial testimony of their expert, Dr. Wells,

and state that the jury obviously believed that he had refuted the findings of AID. We shall address these arguments in turn.

First, the mere refusal of the state officials to prosecute the Liggetts criminally does not affect the determination of whether State Farm had probable cause to file a civil action. In a criminal matter, the government must prove its case beyond a reasonable doubt; in a civil matter, however, the burden is merely to demonstate a fact by a preponderance of the evidence. As stated in Comment d to section 675 of the Restatement (Second) of Torts: "In a word, the initiator of private civil proceedings need not have the same degree of certainty as to the relevant facts that is required of a private prosecutor of criminal proceedings." Thus, the fact that the Liggetts were not charged criminally is not

relevant to the court's determination of whether State Farm had probable cause to file its civil action.

Second, the KBI analysis, although it detected no hydrocarbons and thus did not confirm the AID report, was inconclusive. As the KBI chemist testified, the KBI's equipment was so out-dated that he could not rule out the possibility that hydrocarbons were present, but that the equipment simply was not sensitive enough to detect them. Certainly, then, the KBI report would not have caused a reasonably prudent person to question the AID report or the conclusions of the state and local fire investigators.

Finally, with respect to the testimony of Dr. Wells, we note that he was not even hired until shortly before trial and, thus, his conclusions could not have been taken

into account by State Farm when it filed the action two years earlier. As State Farm notes, "(i)n cases of malicious prosecution, the inquiry as to want of probable cause is limited to the facts and circumstances as they appeared to the defendant at the time the prosecution was commenced." Nelson v. Miller, 227 Kan. at 277, 607 P.2d at 443-44. Moreover, although the jury did apparently believe Dr. Wells' testimony, it does not follow that his testimony was so strong that State Farm should have immediately dropped the suit upon hearing it (as plaintiffs suggest). Because the trial court let the case go to the jury rather than direct a verdict in favor of the Liggetts, the trial court must have held that State Farm had at least presented enough evidence to allow a reasonable jury to find in its favor. That the jury did not

so find does not matter. The point is that State Farm had sufficient evidence both before trial and after Dr. Wells' testimony to warrant a cautious, prudent man to believe that the Liggetts had set their house on fire.[3]

3/ That is not to say, of course, that the Liggetts did set their house on fire. State Farm failed in its effort to prove that fact at the state trial.

Hence, we conclude that State Farm, as a matter of law, had probable cause to file and to continue its declaratory judgment action against the Liggetts. Because the Liggetts, therefore, cannot establish the existence of this element of their cause of action, Rule 56(c) requires the court to enter summary judgment in favor of State Farm. Celotex, 106 S.Ct. at 2552-53. We, thus, need not discuss State Farm's alternative arguments, that it reasonably relied on the advice of counsel

and that the Liggetts' claims are barred by the doctrine of res judicata.

IT IS THEREFORE ORDERED that defendant State Farm Fire and Casualty Company's motion for partial summary judgment against plaintiffs Byron T. Liggett and Lorrieta A. Liggett is granted.

IT IS FURTHER ORDERED that defendant's motion for summary judgment against plaintiffs is granted. Counsel for defendant are directed to prepare and submit to the court a journal entry of judgment within ten (10) days from the date of this order. Plaintiffs shall file any objections thereto within ten (10) days after service upon them of the proposed journal entry.

IT IS FURTHER ORDERED that all costs of this action are taxed against plaintiffs.

Dated this 19th day of March, 1987, at Kansas City, Kansas.

/s/ Earl E. O'Connor
EARL E. O'CONNOR, CHIEF JUDGE

APPENDIX B

UNITED STATES COURT OF APPEALS
FOR THE TENTH CIRCUIT

No. 87-1440
(D.C. No. 85-2538)
(D. Kan.)

BYRON T. LIGGETT AND LORRIETA A. LIGGETT
Plaintiffs-Appellants
vs
STATE FARM FIRE AND CASUALTY COMPANY
Defendant-Appellee

ORDER AND JUDGMENT
Filed August 25, 1987

Before Moore and Seth, Circuit Judges, and Alley, District Judge*

---

*Honorable Wayne E. Alley, District Judge United States District Court for the Western District of Oklahoma, sitting by designation

---

After examining the briefs and the appellate record, this three-judge panel has determined unanimously that oral argument would not be of material assistance in the determination of this appeal. See Fed. R.

App. P. 34(a); 10th Cir. R. 34.1.8(c) and 27.1.2. The cause is therefore ordered submitted without oral argument.

Plaintiffs appeal the entry of summary judgment against them by the district court. Plaintiffs alleged malicious criminal prosecution, malicious civil prosecution, libel, and denial of plaintiffs' Fifth Amendment rights by State Farm Fire and Casualty Company. The district court's statement of undisputed facts was accurate as to all material facts. The court's detailed summary need not be repeated here.

Upon thorough review of the record on appeal, this court concludes that the district court's entry of summary judgment against plaintiffs was correct. We affirm the district court's judgment for substantially the reasons stated by the court in its memorandum and order.

The judgment of the United States District Court for the District of Kansas is AFFIRMED.

The mandate shall issue forthwith.

ENTERED BY THE COURT
PER CURIAM

APPENDIX C

IN THE UNITED STATES COURT OF APPEALS
FOR THE TENTH CIRCUIT

Civil Action Case No. 87-1440

BYRON T. LIGGETT AND LORRIETA A. LIGGETT
Plaintiff-Appellant
vs
STATE FARM FIRE AND CASUALTY COMPANY
Defendant-Appellee

RESUBMISSION OF NOTICE
OF INTENT TO FILE APPEAL
Filed October 15, 1987

On August 25, 1987, the Court filed its answer to our appeal and said that Chief Judge O'Connor and State Farm Fire and Casualty Company are right, there is absolutely nothing wrong with an insurance company suing and, then, while assuming the role of plaintiff-prosecutor, prosecuting its clients in civil court on a charge of criminal offense, that it has made, when the government of the state has determined that those same clients, citizens, should neither be crim-

inally charged nor criminally prosecuted, and that we should not be allowed to lay before a federal court jury our case saying: 1) that such judicial procedure is illegal, unConstitutional, unethical, wrong, and threatening; 2) that State Farm Fire and Casualty Company consciously acted with malice in instituting and maintaining such judicial procedure; 3) that State Farm Fire and Casualty Company should be required to make a formal public apology in order to assure the American people that it knows that such judicial procedure is threatening and unacceptable to our politically defined and constitutionally guaranteed democracy; and 4) that State Farm Fire and Casualty Company, in particular, and the insurance industry, in general, must be prevented from using such judicial process to do to any citizen what State

Farm Fire and Casualty Company did to us.

Immediately upon receiving the Court's Order and Judgment, we wanted it to be known that we will continue to refuse to accept the injustice of what State Farm Fire and Casualty Company did to us, and what it surely will do to others if we ever do accept that injustice, and, accordingly, on September 2, 1987, we mailed our Notice of Intent to File Appeal (copy attached) to the Clerk of the Court and sent a copy to Thomas E. Deacy, Jr., attorney for State Farm Fire and Casualty Company. We did not hear from the Court and so, on September 22, I telephoned the Clerk of the Court's office to inquire as to why we had not received a pro se docketing statement, a docket number, and a copy of the Rules of the Court as we had shortly after filing our Notice of Intent to File Appeal to Chief

Judge O'Connor's decision earlier in the year. I talked with Patrick Fisher, Deputy Clerk of the Court, and Mr. Fisher told me that the Court did not receive our Notice of Intent to File Appeal and that it would not have mattered if the Court had received it insofar as "we would have just sent it back anyway, because it should have been filed with the Supreme Court." Mr. Fisher said that I should check with the post office as to why our Notice of Intent to File Appeal was not delivered to the Court. I called the post office that afternoon and a Mail Loss/ Rifling Report was filled out.

On September 23, 1987, we mailed our Notice of Intent to File Appeal to the Clerk of the United States Supreme Court and on October 5 we received a letter from the office of the Clerk of the Supreme

Court (copy attached) saying that the notice of appeal is to be filed with the Clerk of the Court whose judgment is being appealed. On October 5, after receiving the letter, I telephoned Mr. Fisher to tell him about the letter and to ask him what we should do in order to get our Notice of Intent to File Appeal filed in the proper court. Mr. Fisher told me that as private citizens it is impossible to get to the United States Supreme Court from the United States Court of Appeals by way of a direct appeal to the Supreme Court and that we would have to file a petition for a writ of certiorari, not a direct appeal.

It is our understanding that a writ of certiorari is issued in order that the court issuing the writ may inspect the proceedings and determine whether there have been any irregularities. What irregularities?

The Court of Appeals, presumably on addressing the fundamental issue of our case, the malicious abuse of judicial process with us as the innocent victims, made the decision that State Farm Fire and Casualty Company was not wrong in its use of judicial process. No irregularities in the proceedings, or in the world, could possibly account for that error in the judgment of such a basic, clearly defined, and important issue involving the judicial process. The error is clearly a matter of judgment and is not a matter of irregularities in the proceedings, and, therefore, we see no need for a writ of certiorari and suggest that such would only serve to delay the action of the case. What State Farm Fire and Casualty Company did is a matter of record and is in direct violation of Article Five of our Bill of

Rights that specifically addresses the judicial process and how it is to involve the citizen in regard to the charge and prosecution of criminal offense, and that is the issue we believe we should be allowed to lay directly before the Justices of the United State Supreme Court.

As American citizens who accept the responsibility and privilege of preserving our country as a democracy governed by political institutions in which each of us has a say, with this case we are pressing against State Farm Fire and Casualty Company, we have taken a stand against the corporate takeover of America and challenge the developing totalitarianism corporate business is in the process of imposing on all of us. We know that our case is just and we believe that, once seen, a federal court jury will know that, too, therefore

we believe that the decision of the Supreme Court regarding our appeal will determine whether we retain our constitutional democracy where the individual citizen is protected and preserved through the politically defined laws set forth in the Constitution of the United States or whether we are going to have a totalitarian society structured around the interests of corporate business where there is no free and self-determined individual and where the Constitution of the United States, as a social document and political contract, is nothing but a lot of 18th century, idealistic, ethically pretentious, and empty noble-sounding words and ideas that have no practical purpose and that no one takes seriously when it comes to turning a financial profit or limiting the power of corporate business.

Our courts are our law and must protect and preserve our Constitution against all threats. With our appeal, we shall ask the Supreme Court of the United States to protect and preserve our Constitution against the usurpation of political power by economic power.

Respectfully submitted,

/s/Byron Liggett
Byron T. Liggett
for
Byron T. Liggett and Lorrieta A. Liggett
4211 Sandpiper Lane
Great Bend, Kansas 67530
Telephone 316 792 4141

Pro Se

CERTIFICATE OF SERVICE

We certify that on October 10, 1987, the original and one copy of the foregoing Resubmission of Notice of Intent to File Appeal were mailed to:

Robert L. Hoecker, Clerk
United State Court of Appeals
Tenth Circuit
C404 United States Courthouse
Denver, Colorado 80294

Copy mailed to:

Thomas E. Deacy, Jr.
Deacy and Deacy
1000 Bryant Building
1102 Grand Avenue
Kansas City, Missouri 64106

/s/ Byron Liggett
Byron T. Liggett
for
Byron T. Liggett and Lorrieta A. Liggett
4211 Sandpiper Lane
Great Bend, Kansas 67530
Telephone 316 792 4141

Pro Se

IN THE UNITED STATES COURT OF APPEALS
FOR THE TENTH CIRCUIT

Civil Action Case No. 87-1440

BYRON T. LIGGETT AND LORRIETA A. LIGGETT
Plaintiff-Appellant
vs
STATE FARM FIRE AND CASUALTY COMPANY
Defendant-Appellee

NOTICE OF INTENT TO FILE APPEAL

Because we believe that the politically defined rights that protect and preserve the individual American citizen, as set forth in the Constitution of the United States of America, must persevere and prevail over the ever increasing interests and threats of corporate business, we refuse to accept, as just, the decision of the United States Court of Appeals in our case against State Farm Fire and Casualty Company. The Court is in error in this matter because its decision does not protect the citizen and, rather, promotes the subjugation of

the citizen and our Constitution to the interests of corporate business, and is therefore contrary to the interests of our democracy. Accordingly, we shall ask the United States Supreme Court to tell all of us whether or not our government is now going to allow there ever to be cause, probable or otherwise, for an insurance company to assume the role of plaintiff-prosecutor and prosecute its clients in civil court on a charge of criminal offense that the insurance company has made when the government of the state has determined that those same clients, citizens, should neither be criminally charged nor criminally prosecuted.

Respectfully submitted,

/s/Byron Liggett
Byron T. Liggett
for
Byron T. Liggett and Lorrieta A. Liggett
4211 Sandpiper Lane
Great Bend, Kansas 67530
Telephone 316 792 4141
Pro Se

CERTIFICATE OF SERVICE

We certify that on September 2, 1987, the original and one copy of the foregoing Notice of Intent to File Appeal were mailed to:

Robert L. Hoecker, Clerk
United States Court of Appeals
Tenth Circuit
C404 United States Courthouse
Denver, Colorado 80294

Copy mailed to:

Thomas E. Deacy, Jr.
Deacy and Deacy
1000 Bryant Building
1102 Grand Avenue
Kansas City, Missouri 64106

/s/ Byron Liggett
Byron T. Liggett
for
Byron T. Liggett and Lorrieta A. Liggett
4211 Sandpiper Lane
Great Bend, Kansas 67530
Telephone 316 792 4141

Pro Se

OFFICE OF THE CLERK
SUPREME COURT OF THE UNITED STATES
WASHINGTON, D.C. 20543

October 2, 1987

Mr. Byron T. Liggett
4211 Sandpiper Lane
Great Bend, KS 67530

Re: Byron T. Liggett and Lorrieta A. Liggett
v. State Farm Fire and Casualty Company

Dear Mr. Liggett:

Your notice of intent to appeal and check in the amount of $200.00 were received September 26, 1987, and are returned. The docket fee is due and payable at the time you file your case.

The notice of appeal is filed with the Clerk of the Court whose judgment you are appealing and is reproduced in the appendix of the jurisdictional statement when it is filed. See Rule 15 of the Rules of the Court.

It would appear that you should prepare

and file a petition for writ of certiorari to review the judgment of the United States Court of Appeals for the Eighth Circuit issued August 25, 1987. See Rules 17-21.

Very truly yours,

JOSEPH F. SPANIOL, Jr., Clerk

By /s/ Francis J. Lorson
Francis J. Lorson
Chief Deputy Clerk

vjr
Enc.

cc: Thomas E. Deacy, Jr., Esq.

Clerk, U.S. Court of Appeals for the Tenth Circuit
(Your No. 87-1440)

APPENDIX D

SUPREME COURT OF THE UNITED STATES
OFFICE OF THE CLERK
WASHINGTON, D.C. 20543

November 4, 1987

Mr. Byron T. Leggett
4211 Sanspiper Lane
Gret Bend, Kansas 67530

Dear Mr. Leggett:

The papers which you have submitted for filing are returned for their failure to comply to any extent with the Court's Rules of Procedure, a copy of which is enclosed.

Very truly yours,

JOSEPH F. SPANIOL, Jr., Clerk

By /s/ E. C. Schade
Edward C. Schade
Assistant Clerk

Enclosures

APPENDIX E

OFFICE OF THE CLERK
SUPREME COURT OF THE UNITED STATES
WASHINGTON, D.C. 20543

November 23, 1987

Mr. Byron T. Liggett
4211 Sandpiper Lane
Great Bend, KS 67530

Re: Byron T. Liggett, et ux. v. State Farm Fire and Casualty Company

Dear Mr. Liggett:

Your purported petition for writ of certiorari was received November 9, 1987, and is returned together with your check in the amount of $200.00.

Such a petition, if one is paying the docket fee, must be presented on paper which is 6 1/8 by 9 1/4 as required by Rule 33 of the enclosed Rules of the Court. Questions Presented must appear on the very first page as required by Rule 21.1. The opinion of the United States District Court

must be included in the appendix to the petition.

This case may not be considered as an appeal since I do not find in the appendix a file copy of the notice of appeal submitted to the United States Court of Appeals.

Very truly yours,

JOSEPH F. SPANIOL, Jr., Clerk

By /s/ Francis J. Lorson
Francis J. Lorson
Chief Deputy Clerk

vjr
Enc.

cc: Thomas E. Deacy, Jr., Esq.

APPENDIX F

LAW OFFICES
GRIER, SWARTZMAN & WEINER
1900 CITY CENTER SQUARE
1100 MAIN STREET
KANSAS CITY, MISSOURI 64105

August 26, 1981

Hal D. Meltzer, Esquire
Turner & Boisseau
3900 Broadway
Great Bend, Kansas 67530

Re: State Farm Homeowners Policies

Dear Mr. Meltzer:

I am writing to you on behalf of Colonial Savings and Loan Association. Considerable concern has recently arisen within Colonial over State Farm Fire and Casualty Company's interpretation of its homeowners insurance policies in which Colonial is insured as a mortgagee. Colonial originally intended to write directly to Mr. E. B. Rust of the Bloomington, Illinois office of State Farm concerning this problem. Because there is

presently litigation between State Farm and Colonial over such a policy in State Farm Fire and Casualty Co. v. Byron T. Littett, et al., however, I have agreed with Lee Turner of your office that I will address the concerns to you to be passed on to the appropriate officers of State Farm.

The concern arises directly as a result of the position that State Farm has taken against Colonial in the Liggett litigation. It was Colonial's understanding that the homeowners policy issued to the Liggetts insured Colonial as the mortgagee regardless of any acts of the Liggetts. Certainly had this not been Colonial's understanding, it would not have approved the State Farm policy and would have insisted that the Liggetts secure a different policy. Contrary to this understanding on

the part of Colonial, State Farm is now asserting that Colonial may not be insured by the policy.

Colonial's position with regard to this matter is stated in its pleadings in the Liggett litigation. The mortgage clause contained on page 9 of the policy issued to the Liggetts makes clear that the validity of the mortgagee's claim is independent of the validity of the insured's claim. In addition, the clause states clearly that the policy may not be cancelled with respect to the mortgagee unless he is given notice of the cancellation at least 10 days before the date cancellation is to take effect. The only reasonable construction of these provisions is that the mortgagee will be protected regardless of the acts of the insured until at least 10 days after the mortgagee receives notification to the

contrary.

In the Liggett litigation, State Farm has in effect denied that this is the correct interpretation of the policy. In Count I of its Petition, State Farm asserts that for various reasons the policy is voidable or rescinable with respect to the Liggetts, and in Count II State Farm asserts that upon rescission of the policy, Colonial will not be entitled to the benefits of the policy.

Obviously these assertions by State Farm are of considerable concern to Colonial in the Liggett litigation alone. Of even greater concern to Colonial, however, is the implication that State Farm's position in the Liggett litigation may have for Colonial's other outstanding loans. Colonial presently has a very great number of outstanding loans secured by home

mortgages, approximately half of which involve State Farm homeowners policies in which Colonial is the insured mortgagee. If State Farm is now going to take the position that Colonial is not protected from the acts of the homeowner insured under these policies, it intends to refuse to accept such State Farm policies in the future. In addition, upon expiration of the existing policies, Colonial will do all that it can do legally to cause the present homeowner mortgagors to switch to policies that adequately protect Colonial.

Because this is a matter of urgent concern to Colonial, I would appreciate it if you would immediately forward this correspondence to an appropriate representative of State Farm for response. Unless State Farm will promptly clarify and affirm its obligations to Colonial under these home-

owners policies, Colonial will initiate a policy of eliminating its dependence on such State Farm policies. In addition, Colonial will pursue any remedies it may have with the commissioner of insurance of the State of Kansas.

I would appreciate a response from State Farm by September 14, 1981.

Very truly yours,

GRIER, SWARTZMAN & WEINER

/s/ Charles M. Thomas
Charles M. Thomas

CMT:mm

cc: Ms. Ruth Tucker
Mr. Cliff Shumacher

APPENDIX G

BYRON T. LIGGETT, M.D.
1723 WILLIAMS STREET
GREAT BEND, KANSAS 67530

September 18, 1984

Kansas Supreme Court
Kansas Judicial Center
Topeka, Kansas 66612

RE: In the Supreme Court of the State of Kansas
Case No. 55,905

Dear Supreme Court Justice

Through no fault of ours, our attorney didn't say some things during last Wednesday's oral argument that we had been assured would be said, and before making the decision as to whether we, again, are to be put through the unjust agony of having to prove our innocence while being treated like criminals (except for not having the Constitutional Rights of the criminally charged) or whether you protect us, as did the jury and Judge Bennington, by upholding the

Constitution and exposing State Farm's unethical manner through which it relates to its clients, there are some things the Court should know. When we stood up to ask if we could address the Court that morning, you told us that we couldn't and that we were out of order. We didn't mean to be out of order, we were just asking if we could speak. When you told us we couldn't, we quietly left. However, we have since learned that it is permissible to write to you, so we will say now what we wanted to say then and what we thought would be said for us, but wasn't. We thought you would be told about:

1) John Winfrey, State Farm's fire expert, who, after two examinations of the remains of the house (fire scene), did NOT determine the cause of the fire to be arson; State Farm did not

call him as a witness and we were not allowed to, nor were we allowed to tell the jury about him or his investigation and what he told us about it;

2) the spalling over the various other areas of the floor which was not detected or examined by the State Fire Marshal's investigators or any of the other fire investigators, with the exception of Dr. Wells, because of their failure to clear and inspect the entire floor, thereby, enabling them to put forth their "spalling in a line being evidence of flammables being poured in a line leading to the stairs" theory; they found the spalling in a line because they cleared the floor in a line; if they had cleared the entire floor, they would have found the spalling was not "in

a line", but scattered over most of the floor including the garage and patio where we also saw the firemen directing streams of water from the firetruck; their investigation was not thorough, not complete, not professional, and not done with the intention of finding the cause of the fire, but, rather, done with the sole intent and purpose of making a case for arson; the sheriff's dispatch record shows that at 2:07 AM the fire was already classified as arson before the firetrucks arrived and before anyone had even approached the house;

3) the classical description of a chimney fire by the first on the scene witnesses to the fire;

4) the "allegory letter" that is included in State Farm's brief being an account of what, in retrospect, we should have done had we known that State Farm was not to be trusted; the letter itself being the evidence we wished to introduce at time of trial, as we both testified to during trial; or that Plaintiff's Exhibit 105 is an explanation of that letter;

5) the total cash outlay for purchase of the house being approximately $90,000 not $3,000 as Mr. Turner told you; or the fact that we were considered to be financially solvent by the lending institutions;

6) Mr. Turner's complaint of a de facto malicious prosecution case being based on comments made about him during the

May 6 sworn statements taken at his office, when he himself introduced those sworn statements as evidence and read those portions of the sworn statements containing those comments to the jury during his case-in-chief; if those comments "permeated the entire trial", it is his fault, not ours;

7) Mr. Turner's statement that the first time he saw the video tape made by Dr. Wells was in the courtroom during trial is not true; the first time he saw the video tape was during Dr. Wells' deposition at the McPherson law office;

8) State Farm not deserving to be treated as an individual if State Farm is going to be allowed to assume powers

that go beyond those of the State.

Additionally, we had been assured that a statement from us would be read to the Court as a part of our oral argument. The following is that statement, and is what we, the victims, believe this case truly represents and, in fact, demonstrates:

We, the People, must not permit corporate power to usurp civil authority. Civil authority as the manner through which society relates to the individual, and the individual to society, is defined and established as law through the Constitution and is maintained through the judicial process. The insurance industry is now asking that it be allowed to relate to its clients (the individual) through judicial process that disregards civil authority as defined by the Constitution of the People; that is, the

insurance industry is attempting to establish a new way to relate judicially to the individual. That new way is around the criminal courts which are representative of the People and through the civil courts with the insurance industry assuming the role of prosecutor thus placing the individual client in the role of defendant without the rights and protection of the Constitution. Article Five of the Bill of Rights of our Constitution states (and we quote verbatim), "No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a grand jury." In summary, this case is a demonstration of the insurance industry's attempt to wrest civil authority from the People.

We, the defendants, hold this lawsuit

to be illegal and unConstitutional and have done and will do whatever is in our power to make sure civil authority remains in the hands of the People.

/s/ Lorrieta A. Liggett
Lorrieta A. Liggett
Citizen

/s/ Byron Liggett
Byron T. Liggett
Citizen

Supreme Court, U.S.
FILED
JAN 26 1988
JOSEPH F. SPANIOL, JR.
CLERK

No. 87-1071

In the Supreme Court of the United States

OCTOBER TERM, 1987

BYRON T. LIGGETT AND LORRIETA A. LIGGETT,
Plaintiffs-Appellants,

VS.

STATE FARM FIRE AND CASUALTY COMPANY,
Defendant-Appellee.

ON APPEAL FROM THE UNITED STATES COURT OF APPEALS
FOR THE TENTH CIRCUIT

MOTION TO DISMISS APPEAL
or in the Alternative
TO AFFIRM JUDGMENT

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Counsel for Defendant-Appellee State Farm Fire and Casualty Company

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E. L. MENDENHALL, INC., 926 Cherry Street, Kansas City, Mo. 64106, (816) 421-3030

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No. 87-1071

In the Supreme Court of the United States

OCTOBER TERM, 1987

BYRON T. LIGGETT AND LORRIETA A. LIGGETT,
Plaintiffs-Appellants,

VS.

STATE FARM FIRE AND CASUALTY COMPANY,
Defendant-Appellee.

ON APPEAL FROM THE UNITED STATES COURT OF APPEALS
FOR THE TENTH CIRCUIT

MOTION TO DISMISS APPEAL
or in the Alternative
TO AFFIRM JUDGMENT

Appellee State Farm Fire and Casualty Company[1] moves the Court to dismiss this appeal on the ground

1. Appellee State Farm Fire and Casualty Company (hereinafter referred to as "State Farm") is a wholly-owned subsidiary corporation of State Farm Mutual Automobile Insurance Company. Affiliated companies include State Farm Annuity and Life Insurance Company, State Farm County Mutual Insurance Company of Texas, State Farm General Insurance Company, State Farm Life and Accident Assurance Company and State Farm Lloyds.

that this appeal is not within this Court's jurisdiction, or in the alternative, to affirm the Order and Judgment of the United States Court of Appeals for the Tenth Circuit on the ground that it is manifest that the questions on which the decision of this cause depends are so unsubstantial as not to need further argument.

STATEMENT OF THE CASE

A. Nature of the Case

This is a diversity action brought by the Liggetts in the United States District Court for the District of Kansas wherein the Liggetts sought damages from State Farm arising out of the denial by State Farm of the Liggetts' claims for insurance proceeds for a fire in a dwelling at Great Bend, Kansas and the bringing by State Farm of an action for declaratory judgment against the Liggetts in the District Court of Barton County, Kansas for a determination that the Liggetts were not entitled to recover their loss under State Farm's insurance policy. In addition to various state common law claims (i.e. malicious civil prosecution, malicious criminal prosecution and libel), the Liggetts also made claim for alleged violation of their constitutional rights. Specifically, the Liggetts claimed that the bringing by State Farm of the aforementioned declaratory judgment action violated their rights guaranteed under the Fifth Amendment that "no person shall be held to answer for a capital, or otherwise infamous crime, unless on presentment or indictment of a Grand Jury. . . ."[2]

---

2. The Liggetts now for the first time in connection with this appeal also invoke the Fourteenth Amendment. (*Compare* Juris. Stmt. at 6a *with* Juris. Stmt. at A-19, B-2.)

B. Course of Proceedings Below

The Liggetts commenced this action on October 21, 1985, by filing their Complaint with the district court below. Following the completion of pretrial discovery State Farm moved for summary judgment. On March 19, 1987, almost seventeen months after this action was commenced, and almost nine months after pretrial discovery had been completed, the district court (Honorable Earl E. O'Connor, Chief Judge) filed a Memorandum and Order (Juris. Stmt. at A-1 through A-43) granting State Farm's motions for summary judgment. Chief Judge O'Connor made the following rulings on the Liggetts' state common law claims:

(1) *Malicious Criminal Prosecution.*

That the Liggetts could not, as a matter of law, satisfy a crucial element of their purported claim for malicious criminal prosecution, i.e. that criminal proceedings or charges were brought against the Liggetts by the State of Kansas or its officials.

(2) *Libel.*

With respect to allegedly libelous statements made by State Farm during the pendency of the original state declaratory judgment proceedings, the undisputed and uncontroverted evidence established that the Liggetts' libel claim was barred by the applicable Kansas statute of limitations. With respect to allegedly libelous statements made by State Farm in pleadings filed in the instant case, the undisputed and uncontroverted evidence established that under Kansas law State Farm enjoyed absolute immunity.

(3) *Malicious Civil Prosecution.*

That the Liggetts could not, as a matter of law, satisfy an essential element of their purported claim for malicious civil prosecution, i.e. that State Farm lacked probable cause to file or continue its declaratory judgment action against the Liggetts.[3]

With respect to the Liggetts' claim for alleged violation of their Fifth Amendment constitutional rights, Chief Judge O'Connor held that the Fifth Amendment in no way proscribed State Farm's right under Kansas law to bring an action for declaratory judgment against its own insured seeking a declaration of non-coverage, even if the alleged basis of non-coverage arises out of conduct that could also be characterized as criminal. Accordingly, because the Liggetts could not establish a violation of the Fifth Amendment or any other constitutional provision, Judge O'Connor granted summary judgment in favor of State Farm on that claim.

On August 25, 1987, the United States Court of Appeals for the Tenth Circuit (per curiam) entered its Order and Judgment affirming the district court's entry of summary judgment in favor of State Farm and against the Liggetts. (Juris. Stmt. at B-1 through B-3.) In the appeal now filed with this Court the Liggetts challenge the "decisions of Chief Judge O'Connor and the United States Court of Appeals. . ." (Juris. Stmt. at 29.)

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3. The Liggetts asserted that no matter how strong the facts are, an insurance company, as a matter of law, could *never* have probable cause to bring a declaratory judgment action against its insured, even if the insured admittedly committed a criminal act that voids the insurance policy. Chief Judge O'Connor properly concluded that this proposition by the Liggetts was absurd. (Juris. Stmt. at A-33.)

ARGUMENT

1. This Appeal Is Not Within This Court's Appellate Jurisdiction.

Article III, §2 of the Constitution declares the appellate jurisdiction of this Court shall be subject to "such exceptions" and be exercised under "such regulations" as the Congress may prescribe. This provision was considered in *The Francis Wright*, 105 U.S. 381 (1882), and the views there expressed are particularly apposite here. There the Court said (105 U.S. at 385):

> . . . the rule, which has always been acted on since [*Wiscart v. D'Auchy*, 3 U.S. 321 (1796), is] that while the appellate power of this court under the Constitution extends to all cases within the judicial power of the United States, actual jurisdiction under the power is confined within such limits as Congress sees fit to prescribe.

As was said by Justice Moody in *St. Louis, I.M., & S. Ry. Co. v. Taylor*, 210 U.S. 281 (1908): "Congress has regulated and limited the appellate jurisdiction of this court . . . by . . . the Revised Statutes, and our jurisdiction . . . extends only to the cases there enumerated, even though a wider jurisdiction might be permitted by the constitutional grant of power." *Id.* at 292. By statute the Congress has limited to two specific instances a party's right to appeal to this Court from a decision of the United States Court of Appeals. The first instance is where the United States Court of Appeals has held an act of Congress unconstitutional in a case to which the United States is a party. 28 U.S.C. §1252. The second instance is where the United States Court of Appeals

has held a state statute to be repugnant to the Constitution, laws, or treaties of the United States. 28 U.S.C. §1254(2).

The case at bar is within neither of these instances from which an appeal may be taken to this Court. Indeed, the Liggetts do not even attempt to refer this Court to any statutory provision which they believe would confer jurisdiction of this appeal on this Court.[4] This appeal by the Liggetts should, therefore, be dismissed for lack of appellate jurisdiction. *Cf. United States v. Belt,* 319 U.S. 521 (1943).

2. It Is Manifest That the Questions on Which the Decision of This Cause Depends Are So Unsubstantial As Not to Need Further Argument.

Although the Liggetts list what purport to be twenty-eight "questions presented by this appeal", the fundamental and controlling question presented by the Liggetts on this appeal (and in the district court and court of appeals below) is whether the Bill of Rights to the United States Constitution, and specifically the Fifth Amendment, prohibits an insurance company from bringing a declaratory judgment action against its own insured seeking a declaration of non-coverage on the basis that the insured deliberately and intentionally destroyed the insured property, which act would also constitute a criminal offense under state law. This has been the Liggetts' position in their pleadings in the district court below as

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4. Supreme Court Rule 15.1(e)(iii) provides that the "jurisdictional statement . . . shall contain [a] * * * concise statement of the grounds on which the jurisdiction of this Court is invoked, showing * * * [t]he statutory provision believed to confer jurisdiction of the appeal on this Court, and, if deemed necessary, the cases believed to sustain jurisdiction."

well as in their opposition to State Farm's motions for summary judgment. Chief Judge O'Connor properly held that the Liggetts' arguments in this regard were completely erroneous and frivolous and that "the Liggetts cannot, as a matter of law, prevail on their fifth amendment claim." (Juris. Stmt. at A-19.)

It is well-settled that the Fifth Amendment restricts only the federal government, not private persons or corporations. *Public Utilities Commission of the District of Columbia v. Pollak,* 343 U.S. 451, 461 (1952). Of course, State Farm is a private corporation and in no way can be considered part of the federal or state government.

The Fifth Amendment mandates grand jury proceedings only for the institution of *federal* criminal prosecution for capital or other infamous crimes. *Branzburg v. Hayes,* 408 U.S. 665, 687 (1972). Furthermore, this Court in *Hurtado v. California,* 110 U.S. 516, 538 (1884) held that the due process clause of the Fourteenth Amendment does not guarantee state criminal defendants the right to indictment by grand jury.

At the heart of this appeal now prosecuted by the Liggetts is their contention that the prior declaratory judgment action of *State Farm v. Liggett* filed in the District Court of Barton County, Kansas, was a state criminal case, a criminal prosecution by State Farm charging the Liggetts with the crime of arson and that by bringing the prior action State Farm sought ". . . to develop the example around which it would change the way corporate business relates judicially to the individual citizen." (Juris. Stmt. at 27.) These contentions are frivolous.

The prior suit was filed by State Farm pursuant to the Kansas Code of Civil Procedure, K.S.A. 60-1701, et seq.

In K.S.A. 60-1701 the Kansas legislature granted to courts of record within the State of Kansas jurisdiction and power to make binding adjudications of right "in cases of actual controversy * * * involving the validity or interpretation of . . . instruments of writing. . ." The Kansas courts have interpreted this statute broadly, and it is beyond question that an insurance company has the right under Kansas law to bring a declaratory judgment action against its own insured seeking a declaration of non-coverage. *See, e.g., Central Security Mutual Insurance Co. v. DePinto,* 235 Kan. 331, 681 P.2d 15 (1984); *Western Casualty & Surety Co. v. Budig,* 213 Kan. 517, 516 P.2d 939 (1973); *accord Aetna Life Insurance Co. of Hartford, Connecticut v. Haworth,* 300 U.S. 227 (1937) (holding that an insurance company had the right under the Federal Declaratory Judgment Act [28 U.S.C. §2201] to bring a declaratory judgment action against its own insured). Moreover, the Kansas courts have permitted an insurance company to bring a declaratory judgment action against its insured, seeking a declaration of non-coverage based on conduct of the insured which could be characterized as "criminal". *See, e.g., Patrons Mutual Insurance Association v. Harmon,* 240 Kan. 707, 732 P.2d 741 (1987) (insured alleged to have intentionally shot and killed third party with a pistol); *American States Insurance Company v. Ehrlich,* 237 Kan. 449, 701 P.2d 676 (1985) (insured alleged to have perpetrated fraud); *Casualty Reciprocal Exchange v. Thomas,* 7 Kan.App.2d 718, 647 P.2d 1361 (1982) (insured alleged to have intentionally shot third party with a gun). Indeed, cases from other jurisdictions have recognized the right of an insurance company to bring an action for declaratory judgment against its own insured contending that the insured had set or caused to be set the fire which destroyed the insured building. *Re-*

public Insurance Company v. Jernigan, 719 P.2d 331 (Colo.App. 1985); *Mountain West Farm Bureau Mutual Insurance Company v. Girton,* 697 P.2d 1362 (Mont. 1985); *Westchester Fire Insurance Company v. Deuso,* 505 A.2d 666 (Vt. 1985); *Insurance Company of North America v. Musa,* 785 F.2d 370 (1st Cir. 1986); *American Universal Insurance Company v. Falzone,* 644 F.2d 65 (1st Cir. 1981); *Continental Casualty Company v. Howard,* 775 F.2d 876 (7th Cir. 1985), *cert. denied* 475 U.S. 1122 (1986); *Miele v. Boston Insurance Company,* 288 F.2d 178 (8th Cir. 1961); *Safeco Insurance Company of America v. Kartsone,* 510 F.Supp. 856 (C.D.Cal. 1981); *Unigard Mutual Insurance Company v. Bluemel,* 485 F.Supp. 668 (D.Wyo. 1979).

Finally, the Liggetts contend that it was illegal, improper and unconstitutional for State Farm to have brought the declaratory judgment action in Barton County, Kansas, thereby depriving them of their right to sue in federal court on the basis of diversity of citizenship. Of course, the Liggetts resided in Barton County, Kansas, and the Liggetts' claim accrued in Barton County, Kansas. Under these circumstances, State Farm's declaratory judgment was properly venued only in Barton County, Kansas, where the suit was, in fact, brought. K.S.A. 60-603; *see Alliance Life Insurance Company v. Ulysses Volunteer Fireman's Relief Association,* 215 Kan. 937, 529 P.2d 171 (1974).

The declaratory judgment action brought by State Farm against the Liggetts in the District Court of Barton County, Kansas was a civil and not a criminal action. As such, the Fifth Amendment provision requiring a grand jury indictment prior to federal criminal prosecution for a capital or other infamous crime is totally inapplicable. The Liggetts having failed to establish any constitutional

basis for their claimed rights, it is evident that the questions presented by this cause are so unsubstantial as not to need further argument.

CONCLUSION

In view of the above and foregoing arguments and authorities cited in support thereof, appellee respectfully moves this Court to dismiss this appeal or, in the alternative, to affirm the Order and Judgment of the United States Court of Appeals for the Tenth Circuit.

Respectfully submitted,

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APPENDIX

U.S. Constitution, Article III, §2. Jurisdiction.

Section 2. The judicial Power shall extend to all Cases, in Law and Equity, arising under this Constitution, the Laws of the United States, and Treaties made, or which shall be made, under their Authority; —to all Cases affecting Ambassadors, other public Ministers and Consuls;—to all Cases of admiralty and maritime Jurisdiction;—to Controversies to which the United States shall be a Party;—to Controversies between two or more States;—between a State and Citizens of another State;—between Citizens of different States;—between Citizens of the same State claiming Lands under the Grants of different States, and between a State, or the Citizens thereof, and foreign States, Citizens or Subjects.

In all Cases affecting Ambassadors, other public Ministers and Consuls, and those in which a State shall be a Party, the supreme Court shall have original Jurisdiction. In all the other Cases before mentioned, the supreme Court shall have appellate Jurisdiction, both as to Law and Fact, with such Exceptions, and under such Regulations as the Congress shall make.

* * *

U.S. Constitution, Amendment V. Capital crimes; double jeopardy; self-incrimination; due process; just compensation for property.

No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a Grand Jury, except in cases arising in the land or naval forces, or in the Militia, when in actual service in time of War or public danger; nor shall any person be subject for the same offence to be twice put in jeopardy of life or limb; nor shall be compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use, without just compensation.

28 U.S.C. §1252. Direct appeals from decisions invalidating Acts of Congress.

Any party may appeal to the Supreme Court from an interlocutory or final judgment, decree or order of any court of the United States, the United States District Court for the District of the Canal Zone, the District Court of Guam and the ~~D~~District Court of the Virgin Islands and any court of record of Puerto Rico, holding an Act of Congress unconstitutional in any civil action, suit, or proceeding to which the United States or any of its agencies, or any officer or employee thereof, as such officer or employee, is a party.

* * *

28 U.S.C. §1254(2). Courts of appeals; certiorari; appeal; certified questions.

Cases in the courts of appeals may be reviewed by the Supreme Court by the following methods:

* * *

(2) By appeal by a party relying on a State statute held by a court of appeals to be invalid as repugnant to the Constitution, treaties or laws of the United States, but such appeal shall preclude review by writ of certiorari at the instance of such appellant, and the review on appeal shall be restricted to the Federal questions presented;

* * *

28 U.S.C. §2201. [Declaratory Judgments] Creation of remedy.

(a) In a case of actual controversy within its jurisdiction, except with respect to Federal taxes other than actions brought under section 7428 of the Internal Revenue Code of 1954 or a proceeding under section 505 or 1146 of title 11, any court of the United States, upon the filing of an appropriate pleading, may declare the rights and other legal relations of any interested party seeking such declaration, whether or not further relief is or could be sought. Any such declaration shall have the force and effect of a final judgment or decree and shall be reviewable as such.

* * *

Kansas Statutes Annotated, §60-603. Actions against residents.

An action against a resident of this state, other than an action for which venue is otherwise specifically prescribed by law may be brought in the county,

(1) in which the defendant resides, or

* * *

(3) in which the cause of action arose, or

* * *

Kansas Statutes Annotated, §60-1701. [Declaratory Judgments] Jurisdiction; generally.

In cases of actual controversy, courts of record within the scope of their respective jurisdictions shall have power to make binding adjudications of right, whether or not consequential relief is, or at the time could be, claimed, and no action or proceedings shall be open to objection on the ground that a judgment or order merely declaratory of right is the only relief requested. Controversies involving the validity or interpretation of deeds, wills, or other instruments of writing, express trusts, statutes, municipal ordinances, and other governmental regulations, may be so determined, and this enumeration does not exclude other instances of actual antagonistic assertion and denial of right.